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SECTION 1: DEFINITIONS AND TERMS

The following terms as used in any agreement of which these General Provisions are a part are defined as follows:

Architect:

The person or persons so specified on the Technical Specifications and/or Project Plans.

ASTM:

American Society for Testing and Materials latest edition.

Bid Package:

All of the documents listed as comprising the entire Bid Package as specified in the Instructions to Bidders and representing the full set of documents made available to bidders on the Project.

Caltrans Construction Manual:

The State of California Department of Transportation Construction Manual, current edition or otherwise specified.

Caltrans Standard Specifications:

The State of California Department of Transportation Standard Specifications for Construction of Local Streets and Roads, current edition or otherwise specified.

City:

City of Fairfield

City Standards:

The edition of the City of Fairfield Public Works Standard Specifications and Details in effect on the date of the last signature to this Contract.

Contract:

The agreement between the City and Contractor concerning the Project.

Contract Documents:

All those documents listed in the Contract as comprising the entire agreement between the City and the Contractor.

Contractor:

The successful bidder for the Project and party to the Contract with the City as specified in the Contract.

Days:

Unless otherwise specified in the Contract Documents, days mean calendar days.

Engineer:

The City's authorized representative for administration and overall management of the Project Contract and Work. The Engineer is the official point of contact between the City and the Contractor.

Project:

The Project as described in the Technical Specifications and Project Plans.

Project Inspector:

The party or parties charged by the City with inspecting the Work for compliance with the requirements of the Contract Documents and applicable laws and regulations. The Project Inspector acts under the direction of the City and must coordinate with the Engineer as directed by the City in accordance with the Contract Documents.

Project Plans:

The primarily graphic detailed requirements concerning the Project contained in the Bid Package and any addenda to the Project Plans signed by authorized City representatives and issued prior to bid opening; Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening; and change orders and other amendments to the Project Plans signed by authorized representatives of the City and the Contractor in accordance with the requirements of the Contract Documents.

Project:

The project described in the Technical Specifications and Project Plans.

Subcontractor:

A person, firm or corporation that is obligated as a party to a contract with the Contractor to perform part of the Work. For purposes of these General Provisions Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Work according to the Technical Specifications and/or Project Plans.

Technical Specifications:

The detailed Project requirements contained in the Bid Package and any addenda to the Technical Specifications signed by authorized City representatives and issued

prior to bid opening; Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening; and change orders and other amendments to the Technical Specifications signed by authorized representatives of the City and the Contractor in accordance with the requirements of the Contract Documents.

Work:

The furnishing of all equipment, tools, apparatus, facilities, material, services, labor and skill necessary to perform and complete in a good and workmanlike manner the Project as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.

Written Notice:

Will be deemed to have been duly served for purposes of these General Provisions and any Contract of which they are a part if delivered in person to the individual or to a member of the firm or to any office of the corporation for whom the notice is intended, or if sent by registered or certified mail to the last known business address known to the party giving notice. Unless otherwise specified in the Contract Documents, the last known address of the Contractor will be that listed in the Contractor's completed Proposal.

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SECTION 2: SCOPE OF WORK

2.1 DOCUMENTS FURNISHED BY CITY

The City will furnish to the Contractor, free of charge, five (5) sets of prints of the Project Plans and Technical Specifications for execution of the Work. Throughout the performance of the Work the Contractor must keep one copy of the Project Plans and Technical Specifications in good order and available for review by the Engineer, the Architect, and any other City contractors or representatives. Electronic PDF documents may be available if requested.

2.2 OWNERSHIP OF DOCUMENTS FURNISHED BY CITY

All documents furnished by the City, including, but not limited to, the Technical Specifications, Project Plans, and any copies, are the property of the City. Documents furnished by the City may not be used on any other work.

2.3 TECHNICAL SPECIFICATIONS AND PROJECT PLANS.

- A. The Technical Specifications and Project Plans are complementary and intended to mutually describe the Work necessary to complete the Project in accordance with the Contract Documents.
- B. In general, the Project Plans indicate dimensions, position and kind of construction, and the Technical Specifications indicate qualities and methods. Any Work indicated on the Project Plans and not mentioned in the Technical Specifications or vice versa must be furnished as though fully set forth in both. Work that is not particularly detailed, marked or specified will be the same as similar Work that is detailed, marked or specified. The Contractor must furnish items necessary for the operation of equipment depicted in the Project Plans or specified in the Technical Specifications that are suitable to allow such equipment to function properly at no extra charge.
- C. The Contractor must notify the Engineer as soon as possible of any apparent errors or inconsistencies, including, but not limited to, typographical or notational errors in the Project Plans, Technical Specifications, and/or in work done by others affecting the Work. The Engineer will issue instructions concerning any such apparent errors or inconsistencies. If the Contractor proceeds with Work impacted by apparent errors or inconsistencies without instructions from the Engineer, the Contractor does so at its sole risk and will have all of the obligations and the City will have all of the rights and remedies specified in Section 11 concerning any resulting damage or defect.
- D. These General Provisions apply with equal force to all of the Work, including extra work authorized by the Engineer in accordance with the Contract Documents. The Contractor must submit any required shop diagrams and/or drawings by the times and in the quantities indicated in the Technical Specifications. Any such shop diagrams and/or drawings must show completely the Work to be done, expanding on the Project Plans concerning details not previously shown, field conditions and the condition of the Work. Engineer review of such shop diagrams and/or drawings will concern conformance with the requirements of the Contract Documents only.

The Engineer assumes no responsibility for the correctness or accuracy of the dimensions or any other contents of any shop diagrams and/or drawings submitted by the Contractor. The Contractor must check all dimensions at the Work site. Shop diagrams and/or drawings must be clearly marked with the name of the Project and the name of the Contractor, subcontractor or supplier making the submittal, and must be stamped and signed by the Contractor and submitted under a signed transmittal letter from the Contractor certifying that all dimensions have been checked at the Work site. These requirements are mandatory. The Engineer will not review shop diagrams and/or drawings that do not satisfy these requirements. The Contractor will be responsible for any and all discrepancies between dimensions of the actual Project site and/or Work and those shown on shop diagram and/or drawings submitted by the Contractor, and for any other errors contained in or resulting from such shop diagrams and/or drawings, including, but not limited to, errors in material and/or equipment quantities and any resulting errors, delays or additional cost in the performance of the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any discrepancies or errors in shop diagrams and/or drawings submitted by the Contractor, and concerning any resulting errors, delays or additional costs in the performance of the Work.

SECTION 3: CONTROL OF WORK AND MATERIAL

3.1 ENGINEER'S STATUS

The Engineer will administer the Project in accordance with the Contract Documents. After execution of the Contract and issuance of the Notice to Proceed, all correspondence and/or instructions concerning the Project between the Contractor and/or City must be forwarded through the Engineer. Except as otherwise provided in the Contract Documents, the Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, or procedures or for safety precautions in connection with the Work. The Engineer, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Engineer will also have the authority to require inspection or testing of the Work.

3.2 ARCHITECT'S STATUS

The Architect will advise the Engineer concerning decisions on all claims of the Contractor and all other matters relating to the execution and progress of the Work or the interpretation of the Contract Documents. The Architect will also advise the Engineer concerning Work that does not conform to the Contract Documents. Whenever, in the Architect's opinion, it is necessary or advisable in accordance with the Contract Documents, the Architect may recommend to the Engineer inspection or testing of the Work, whether or not such Work is then fabricated, installed or completed.

Architect has no authority over the contractor and reports directly to the Engineer.

3.3 INSPECTION AND TESTING OF WORK AND MATERIAL

- A. The City, the Engineer, the Architect and their representatives will have access to the Work at all times wherever it is in preparation or progress. The Contractor must provide proper facilities for such access and for inspection.
- B. The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Architect or Engineer.
- C. If the Engineer, the Technical Specifications, or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must give the Engineer timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any Work subject to such testing that is covered up without timely notice to the Engineer or without the approval or consent of the Engineer must, if required by the Engineer, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any Work subject to testing that is covered up or otherwise rendered inaccessible for inspection without timely notice to the Engineer and that is not uncovered for examination at the Contractor's expense if required by the Engineer.

- D. Tests of materials or qualification tests required by the Contract Documents must be made in accordance with the Technical Specifications and the requirements of the California Building Standards Code as adopted by the City and other applicable law. Copies of all testing reports will be distributed as required in the Technical Specifications.
- E. The City or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to be according to the Contract Documents, the City will pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Engineer. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.
- F. The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the City consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the City has not consented to accept.

3.4 SAMPLES FURNISHED BY THE CONTRACTOR

The Contractor must furnish all samples for approval as directed in sufficient time to permit the Architect or Engineer to examine, approve and select samples before they are required by the progress of the Work. Portions of the Work for which samples are required and for which the Architect or Engineer has selected samples must be in accordance with such approved samples. Samples must be sent prepaid to the office of the Engineer or to such place as the Engineer may direct.

3.5 MATERIALS AND SUBSTITUTIONS.

- A. Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.
- B. If the Contractor submitted complete information to the Public Works Department for products proposed as equals in accordance with the bid package, and the City approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand or model number in the Technical Specifications or Project Plans. The City retains the right, in its sole discretion, to accept or reject

any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the City to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the City does not accept a proposed substitution, the Contractor must furnish the product specified in the Technical Specifications or Project Plans for the Contract Price, regardless of whether the product is specified by manufacturer's name, brand or model number, or otherwise.

- C. During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the City, or with the use of existing City facilities by the public. Materials may not be stored in a manner that presents a safety hazard or a nuisance. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the City or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the City or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the City. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or re-execute Work using non-conforming materials, and/or to make good all Work destroyed or damaged by such removal and/or execution.
- D. If any portion of the Work done or material furnished under the Contract proves defective and not in accordance with the Project Plans or Technical Specifications, and if the Engineer determines that the imperfection of the same is not of sufficient magnitude or importance to make the Work dangerous or undesirable, or if the removal of such Work is impractical or will create conditions which are dangerous or undesirable, the Engineer may retain such Work, instead of requiring the imperfect Work to be removed and reconstructed, and make such deductions therefore in the payments due or to become due the Contractor as are just and reasonable.

3.6 AUDIT AND EXAMINATION OF RECORDS

The City may examine and audit at no additional cost to the City all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor, Subcontractors, and suppliers providing supplies, equipment and other materials required for the Work, including computations

and projections related to bidding, negotiating, pricing or performing the Work or Contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until three years after final payment under the Contract. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be expended is in excess of \$10,000, this Contract will be subject to the examination and audit of the State Auditor, at the request of the City, or as part of any audit of the City, for a period of three (3) years after final payment under the Contract.

3.7 ADVERTISING

No advertising signs of any kind may be displayed on the Work site, or on fences, offices or elsewhere adjacent to the Work site.

3.8 PROJECT SCHEDULE

Within ten (10) days after execution and delivery of the Contract, and prior to the issuance of the notice to proceed, the Contractor must deliver to the Engineer a bar chart and critical path (CPM) schedule detailing the Contractor's intended schedule of Work for the entire Project. The schedules must be detailed to clearly show the relative sequence of the items of Work, their inter-relationships, start and completion dates, float, the critical path, and any other item deemed necessary by the Engineer. The schedule must allow for the completion of the entire Work within the Time for Completion.

- A. City Review of Schedule. The City may review the Contractor's submitted schedule and may note any exceptions. The Contractor must correct any exceptions noted by the City within five (5) working days of being notified of the exceptions.
- B. Update of Schedule. After submission of a schedule to which the City has taken no exceptions, the Contractor must submit an updated schedule on a monthly basis or as otherwise specified by the City until completion of the Work. The updated schedule must show the progress of Work as of the date specified in the updated schedule.
- C. Float. The schedule must show early and late completion dates for each task. The number of days between these dates will be designated as "Float". The Float will be designated to the Project and will be available to both the City and the Contractor as needed to complete the Work in accordance with this Contract.
- D. Failure to Submit Schedule. If the Contractor fails to submit schedules within the time periods specified in this Section, or submits a schedule to which the City has taken uncorrected exceptions, the City may withhold payments to the Contractor until such schedules are submitted and/or corrected in accordance with the Contract Documents.
- E. Responsibility for Schedule. The Contractor will be solely and exclusively responsible for creating the schedule and properly updating it. The City may note

exceptions to any schedule submitted by the Contractor. However, the Contractor will be solely responsible for determining the proper method for addressing such exceptions and the City's review of the schedule will not create scheduling obligations of the City.

3.9 CONSTRUCTION STAKING

Unless otherwise stated in the contract documents, all work done under the Contract must be in conformance with the Project Plans and staked by the Engineer in the field. The Contractor must inform the Engineer, forty-eight (48) hours in advance, of the time and places at which he or she wishes to do work, in order that lines and grades may be furnished and necessary measurements for record and payment made, with the minimum of inconvenience to the Engineer and delay to the Contractor.

3.10 MATERIALS TESTING

Materials will be tested by the City of Fairfield or its authorized agent, following State of California Test Methods. Statistical testing may not be used. All individual samples must meet the specified test results. Each material used must meet the specified requirements.

The Contractor must request and coordinate all testing. All tests must occur in the presence of the Project inspector. The City will, at its sole discretion, have the right to reject any and/or all test results, that do not meet this requirement, and to order a retest in the presence of the Project inspector. The costs for all retests so ordered will be the responsibility of the Contractor. The cost of all retests will be charged to the Contractor at the actual cost plus 30 percent, with a minimum charge of \$150.00 per test to cover staff and administrative costs.

The City, at its sole expense, will provide all initial material and compaction tests. Sampling and testing will comply with Chapter 6 of the Caltrans Construction Manual at a minimum. Where conditions vary, the City may perform additional testing. Cost for testing of materials offered in lieu of the specified materials will be the responsibility of the Contractor. Cost for R-value tests when required by the Caltrans Standard Specifications will be the responsibility of the Contractor.

Testing will only be performed on normal City working days between the hours of 8:00 a.m. and 4:00 p.m. unless other arrangements are made in advance. Tests performed outside of these hours may be subject to increased charges.

The Contractor must request all tests in writing a minimum of 2 working days in advance of the time desired. A minimum of one working day must be allowed for compilation and reporting of data and test results after tests have been performed. No subsequent layer of material may be placed until a passing test is obtained and acknowledged by the City.

Concrete and asphalt may be supplied only from suppliers approved and certified by the State Department of Transportation. Proposed mix designs for all concrete and asphalt concrete to be placed within the City of Fairfield must be provided to and approved by the City, prior to placement.

The Contractor must coordinate with the City concerning any additional testing as required.

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SECTION 4: CHANGES IN WORK

4.1 CITY DIRECTED CHANGE ORDERS

The City may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents, including, but not limited to the Technical Specifications, or Project Plans. Such amendments will in no way void the Contract, but will be applied to amend the Contract Price, if such amendments affect the Contract Price, the Project schedule, if such amendments affect the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment in accordance with this Section 4.

4.2 WRITING REQUIREMENT

Change orders and other amendments to the Technical Specifications, the Project Plans, or other Contract Documents may be made only upon prior written approval of the Engineer and as evidenced by a writing executed by authorized representatives of the City and the Contractor.

4.3 CONTRACTOR PROPOSED CHANGE ORDERS

Unless the Engineer otherwise authorizes or the City and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Engineer no later than the time of the proposed change.

4.4 ALL CHANGE ORDERS

All change order proposals must be submitted on completed City Change Order forms. All such change order proposals must itemize all cost impacts of the proposed change order and include a total price for that change order and the amended Contract Price that would become effective upon execution of the change order. All change order proposals must specify any change in the Project schedule, or in any project milestone including, but not limited to, the Time for Completion, under the change order. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, may be accomplished by the Time for Completion then in effect.

4.5 CHANGE ORDER PRICING

Change order pricing for all change orders, whether additive, deductive, or both, will be governed by the following:

- A. Prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify prices.
- B. Cost impacts involving items for which the Contract Documents do not specify prices may be paid on a lump sum basis as approved by the City.
- C. For cost impacts involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the City, charges or credits for the Work will be paid on a time and materials basis in accordance

with the following and subject to Caltrans Standard Specifications, provision 9-1.03 entitled 'Payment Scope' concerning allowable direct charges. The time and materials payment will be the sum of and limited to the direct and indirect costs for labor, materials, equipment and overhead calculated as follows:

1. Labor: The Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the Work. The cost of labor utilized in performing the Work, whether the employer is the Contractor, a subcontractor or other entity engaged in the performance of the Work, will be the sum of the following:
 - a. Actual Wages: The actual wages paid will include any employer fringe benefit payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes. The actual wages and fringe benefits paid must be at the rates shown on the certified payroll documents submitted by the Contractor.
 - b. Labor Surcharge: The labor surcharge will be as set forth in the latest edition of the California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates". The labor surcharge will constitute full compensation for all payments imposed by State or Federal laws and for all other payments made to, or on behalf of, workers engaged in the performance of the Work, excluding the Actual Wages as defined above.
 - c. Fixed Markup: A fixed markup of 15% of the sum of the actual wages paid and the labor surcharge applicable to such actual wages, together with the actual wage and labor surcharge costs described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all labor for the Work.
2. Materials: Materials costs will be the direct costs for materials actually exhausted, consumed or entering permanently into the Work, plus a fixed markup of 15% of such direct materials costs, which, together with the direct cost of materials as described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all materials for the Work.
3. Equipment: All equipment used will be paid in accordance with the rates in subsection 9-1.04D entitled "Equipment Rental" of the Caltrans Standard Specifications, which subsection 9-1.04D is made a part of this Contract as described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all equipment for the Work.

4. Unless approved in writing in accordance with provision 4.2 of these General Provisions in advance of performance of the Work, any and all other cost impacts (including, but not limited to profit, bond premiums or fees, insurance premiums or fees, superintendent or management labor, their office or engineering staffs, clerical expenses, vehicles, home office expenses, Work site office expenses, small tools and supplies, utility costs, permit costs, and licensing costs) involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the City, will constitute incidentals, full compensation for which will be deemed included in the markups for labor, material, and equipment specified above, and no additional compensation for such cost impacts will be allowed.

4.6 LIABILITY UNDER UNAPPROVED CHANGE ORDERS

The Contractor will be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.

4.7 CHANGES SUBJECT TO CONTRACT DOCUMENTS

Any changes in the Work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions of the Contract Documents, including, but not limited to, the Technical Specifications and the Project Plans, except as modified by such change orders or amendments.

4.8 CHANGE ORDER DISPUTES

- A. Disputed City-Directed Change Orders. If the Contractor disputes a City directed change order following a reasonable effort by the City and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the City, the Contractor must commence performing the Work consistent with the disputed change order within five (5) working days of the last meeting between representatives of the Contractor and the City to resolve the dispute, or within the time specified in the disputed City directed change order, whichever is later. In performing Work consistent with a disputed City-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.
- B. Disputed Contractor Proposed Change Orders. If the City disputes a Contractor proposed change order, the City and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the City. Regardless of and

throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the City and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

SECTION 5: TRENCHING AND UTILITIES

5.1 EXCAVATION MORE THAN FOUR FEET DEEP

In accordance with California Public Contract Code Section 7104, if the Work involves excavation more than four feet deep the Contractor must promptly notify the City in writing before disturbing: any material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; any subsurface or latent physical conditions at the Work site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or any unknown physical conditions at the Work site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The City will promptly investigate any such conditions for which notice is given. If the City finds that the conditions do materially differ, or involve hazardous waste, and would cause a decrease or increase in the cost or time of performance of the Work, the City will issue a change order pursuant to Section 4 of these General Provisions. If a dispute arises between the City and the Contractor concerning whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the cost or time of performance, the Contractor will not be excused from any completion date provided in the Contract Documents, but will proceed with all Work to be performed. The Contractor will retain all rights under contract or law pertaining to resolution of disputes and protests between contracting parties.

5.2 EXCAVATION OF FIVE FEET OR MORE

In accordance with California Labor Code Section 6705, contractors performing contracts exceeding \$25,000 in cost and involving excavation five or more feet deep must submit for the City's acceptance, prior to excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer.

5.3 UTILITY RELOCATION COSTS

- A. In accordance with California Government Code Section 4215, the City assumes the responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the Work site if such utilities are not identified by the City in the Technical Specifications and/or Project Plans. The City will compensate the Contractor for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities located at the Work site and not identified with reasonable accuracy in the Technical Specifications and/or Project Plans. The City will also compensate the Contractor for the cost of equipment on the Project necessarily idled during such work. The Contractor will not be assessed liquidated damages for Work completion delays caused by the City's failure to provide for removal or relocation of such main or trunkline utility facilities.

- B. Nothing in this provision or the Contract Documents will be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Work site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, cleanouts, on or adjacent to the Work site; provided, however, that nothing in this provision or the Contract Documents will relieve the City from identifying main or trunklines in the Technical Specifications and/or Project Plans.
- C. Nothing in this provision or the Contract Documents will preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.
- D. Nothing in this provision or the Contract Documents will be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.
- E. If the Contractor while performing the Work discovers utility facilities not identified by the City in the Technical Specifications and/or Project Plans, the Contractor must immediately notify the City and utility in writing.
- F. Either the City or the utility, whichever owns existing main or trunkline utility facilities located on the Work site, will have sole discretion to effect repairs or relocation work or to permit the Contractor to perform such repairs or relocation work at a reasonable price.

SECTION 6: PROJECT FACILITIES

6.1 WORK SITE OFFICES

Any Work site office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such Work site office facilities will be paid under mobilization or otherwise specified.

6.2 CITY RIGHTS OF ACCESS AND OWNERSHIP

The City and its authorized representatives will at all reasonable times while such office facilities are located at the Work site (including, at a minimum, all times during which the Work is performed), have access to any such Work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the City and its authorized representatives, neither the Contractor nor its privities will have a reasonable expectation of privacy pursuant to the Fourth Amendment to the Unites States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such Work site facilities will be deemed at all times to be City property subject to inspection and copying by the City and its authorized representatives at all reasonable times while such facilities are located at the Work site (including, at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the City's rights of access and/or ownership pursuant to this Section 6 will constitute a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

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SECTION 7: PROSECUTION AND PROGRESS OF THE WORK

7.1 LIQUIDATED DAMAGES

It is agreed by the parties to the contract that in case all the work called for under the contract is not completed before or upon the expiration of the time limit as set forth in these specifications, damage will be sustained by the City of Fairfield, and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City of Fairfield the sum of Five Hundred Dollars (\$500) per day for each and every day's delay beyond the time prescribed to complete the work; and the Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City of Fairfield may deduct the amount thereof from any money due or that may become due the Contractor under the Contract. For the purposes of the calculation of the start of the liquidated damages, the Work herein contracted for shall be deemed to be completed when the same has been actually completed in accordance with the Project Plans and Technical Specifications and to the satisfaction of the Engineer, and the Project has been accepted by the City in accordance with Section 10.3 of these General Provisions.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the time specified, the City Council shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if it decides to extend the time limit for the completion of the contract, it shall further have the right to charge to the Contractor, his heirs, assigned, or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate shall not be included in such charges.

The Contractor shall not be assessed with liquidated damages nor the cost of engineering and inspection during any unavoidable delays, as that term is defined in Section 7.3.

The City and the Contractor further agree in accordance with California Government Code Section 53069.85 that the liquidated damage sums specified in this provision are not manifestly unreasonable under the circumstances existing at the time the Contract was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Contract.

7.2 NO DAMAGE FOR AVOIDABLE DELAYS

All delays in the Work that might have been avoided by the exercise of care, prudence, foresight and diligence of the Contractor or any privities of the Contractor will be deemed avoidable delays. Delays in the Work that may be unavoidable but that do not necessarily affect other portions of the Work or prevent completion of all Work within the Time for Completion, including, but not limited to, reasonable delays in Engineer approval of shop drawings, placement of construction survey stakes, measurements and inspection, and such interruption as may occur in prosecution of the Work due to reasonable interference

of other contractors of the City, will be deemed avoidable delays. The Contractor will not be awarded a change in the Project schedule or the Time for Completion, and/or additional compensation in excess of the contract price, for avoidable delays.

7.3 UNAVOIDABLE DELAYS

All delays in the Work that result from causes beyond the control of the Contractor and that the Contractor could not have avoided through exercise of care, prudence, foresight, and diligence will be deemed unavoidable delays. Orders issued by the City changing the amount of Work to be done, the quantity of materials to be furnished, or the manner in which the work is to be prosecuted, and unforeseen delays in the prosecution of the Work due to causes beyond the Contractor's control, such as strikes, lockouts, labor disturbances, fires, epidemics, earthquakes, acts of God, neglect by utility owners or other contractors that are not privities of the Contractor will be deemed unavoidable delays to the extent they actually delay the Contractor's completion of the Work. The Contractor shall within ten (10) days from the beginning of any such delay notify the City Engineer in writing of the causes of delay, who shall ascertain the facts and the extent of delay, and his findings of the facts thereon shall be final and conclusive. The Contractor will be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for unavoidable delays to the extent such delays actually delay the Contractor's completion of the Work and/or result in the Contractor incurring additional costs in excess of the Contract Price.

Delay due to normal, adverse weather conditions will not be deemed unavoidable. The Contractor should understand that normal adverse weather conditions are to be expected and plan the Work accordingly, such as by incorporating into the Project Schedule normal, adverse weather delays as reflected in historical data of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce for the weather station most applicable to the Work site.

7.4 NO DAMAGE FOR CONTRACTOR CAUSED DELAY

Contractor will not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any Subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents.

7.5 NO DAMAGE FOR DELAY NOT CAUSED BY THE CITY, DELAY CONTEMPLATED BY THE PARTIES, OR OTHER REASONABLE DELAY

Contractor will not be entitled to damages for delay to the Work caused by the following, which the City and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances:

- A. Exercise of the City's right to sequence the Work in a manner that would avoid disruption to the City and other contractors based on: the failure of the Contractor or any Subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the City or any other governmental agency of competent jurisdiction of any

government act or regulation, or enforcement by the City of any provisions of this Contract.

- B. Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the City or its representatives in a reasonable time in accordance with the Contract Documents.

7.6 DELAYS CAUSED BY THE CITY AND/OR ITS PRIVITIES

Delay caused by the City and/or other contractors of the City will be deemed unavoidable delays. Either the City or the Contractor may propose a change in the Time for Completion and/or the Project Schedule for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City and the Contractor. Such proposed changes in the Time for Completion will constitute change order proposals subject to Section 4. In accordance with Section 4, the City and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing and/or changes in the Time for Completion and/or the Project Schedule are in anticipation of impacts that may, but have not yet occurred, the City will be obligated to pay the Contractor for such anticipated impacts or to award a change in the Time for Completion and/or the Project Schedule in accordance with the Contract and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated impacts. Notwithstanding anything to the contrary in Section 4, the City and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the City and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

7.7 DELAY CLAIMS

Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.

7.8 CONTRACTOR COORDINATION OF THE WORK

- A. The City reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor must at all times conduct the Work so as to impose no hardship on the City, others engaged in the Work or other contractors working at the Work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.
- B. If any part of the Work depends for proper execution or results upon the work of the City or any other contractor, the Contractor will, before proceeding with such

Work, promptly report to the City any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the City's or other contractor's Work as fit and proper.

- C. The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade will be part of the Work except where stated otherwise.
- D. The Contractor will provide proper facilities at all times for access of the City, the Engineer, Architect, and other authorized City representatives to conveniently examine and inspect the Work.

SECTION 8: CONTRACTOR RESPONSIBILITIES

8.1 ELIGIBILITY

By executing the Contract, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. To the full extent permitted by law the Contractor will hold harmless, indemnify and defend the City from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.

8.2 SUPERVISION OF THE WORK

The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by Subcontractors. The Contractor is charged with ensuring that all orders or instructions from the City, Engineer or Architect are disseminated to and followed by all Subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the City, the Engineer, or the Architect may require the Contractor and/or Subcontractors engaged in performance of the Work to attend a project meeting and the Contractor will attend, and ensure the attendance of any Subcontractors whose attendance is required by the City and/or advisable in light of the matters to be addressed at the meeting.

8.3 CONTRACTOR'S SUPERINTENDENT

The Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent may not be changed without the consent of the City. The superintendent will represent the Contractor and all directions given by the City to the superintendent will bind the Contractor in accordance with this Contract. Superintendent time included in Contractor's completed bid schedule and/or in approved change orders, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.

8.4 COMPETENT EMPLOYEES

The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Work any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the City determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the City, the Contractor must ensure that employee performs no further Work and is no longer present at the Work site. Any such Contractor employee may not again be employed on the Work without City approval.

8.5 ITEMS NECESSARY FOR PROPER COMPLETION OF THE WORK

Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities and services

necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.

8.6 SUBCONTRACTING

- A. The Contractor must perform with his or her own organization, a value of work amounting to not less than fifty percent (50%) of the contract amount, except that the bid amount for subcontracted "Specialty Items" so designated in the Technical Specifications may be eliminated from the contract amount and not considered as sub-contracted for the purposes of calculating the value of work to be performed by the Contractor. For the purposes of determining the value of work to be performed by the Contractor pursuant to this provision, materials, equipment, incidentals, etc., shall be considered to have been purchased by the Contractor or Subcontractor that is to install them. Where a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated cost of such portion of the subcontracted item, as determined from information submitted by the Contractor, subject to approval by the Engineer.
- B. By executing the Contract, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the City. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.
- C. The Contract and the performance of the Work are subject to the requirements of the Subletting and Subcontracting Fair Practices Act codified at California Public Contract Code Section 4100 and following. If the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of 1 percent of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Contract the Contractor subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Contract, assessment of a penalty of up to 10 percent of the amount of the subcontract, and disciplinary action by the Contractors State License Board.
- D. No contractual relationship exists between the City and any Subcontractor engaged in performance of the Work.

- E. Incorporation of Contract Documents. The Contractor must incorporate the Contract Documents in each contract with a Subcontractor engaged in the performance of the Work. The Contractor will be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate Project information to a Subcontractor that results in improper submittals and/or Work, or time or other impacts. The Contractor will have all of the obligations and the City will have all of the remedies that are specified in Section 11 concerning any delay or additional costs incurred due to failure of the Contractor to provide adequate and accurate Project information to Subcontractors.
- F. Coordination of Subcontract Work: The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.

8.7 INSURANCE

- A. All required insurance must be provided in the form of "occurrence"-type policies underwritten by admitted insurers in the State of California with a rating of A- or better and a Financial Class VII or higher from the current year Best Rating Guide. All policies must be issued at the expense of the Contractor and must be maintained at the Contractor's expense throughout the performance of the Work.
- B. The Contractor and any subcontractors engaged in performance of the Work must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The Contractor must verify that all Subcontractors comply with this requirement.
- C. Within ten working days following notice concerning the award the Contractor must submit to the City along with executed copies of all other documents specified in the Contract Check List certificates of insurance with original endorsements, both of which reference the same policy number, evidencing that the Contractor has in effect and will maintain throughout the performance of the Work the following kinds and amounts of insurance:

- 1. Workers' Compensation Insurance. Workers Compensation and Employers Liability insurance as required by any applicable law, regulation or statute, including the provisions of Division IV of the Labor Code of the State of California, and any act or acts amending it. Such insurance must cover the full liability of the Contractor. The Contractor's Employer's Liability Insurance must be in an amount no less than \$1,000,000.00 per claim.

The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

- 2. Commercial General Liability and Automobile Liability Insurance. Coverage for liability because of Bodily Injury and property Damage including, but not limited to the following coverage:

- a. Completed Operations and Products Liability
- b. Bodily Injury
- c. Personal Injury
- d. Broad Form Property Damage Liability
- e. Contractual Liability insuring the obligations assumed by the Contractor under the Contract Documents

Automobile Liability, including owned, non-owned and hired automobiles

Coverage for the XCU hazards of Explosion, Collapse and Underground

- 3. Commercial Umbrella Policy. The Commercial policy is to insure losses above General liability, Employers liability, and auto liability limits.

D. The insurance furnished by the Contractor must be primary in the amount of any loss.

- 1. The limits of the insurance required above will be at least:

Comprehensive General Liability

Bodily Injury Liability	\$3,000,000	each occurrence
	\$6,000,000	each aggregate

(Assigned aggregate with separate limits for this project)

Property Damage Liability	\$3,000,000	each occurrence
	\$6,000,000	each aggregate

(Assigned aggregate with separate limits for this project)

Comprehensive Automobile Liability

Bodily Injury Liability	\$1,000,000	each person
	\$1,000,000	each occurrence

Property Damage Liability	\$1,000,000	each occurrence
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Commercial Umbrella Policy	\$10,000,000	as required by project
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Builder's Risk (Course of construction)	Value of Contract
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- 2. For each insurance policy required under the Contract (except for the required workers compensation insurance policy) the Contractor must provide endorsements, in a form acceptable to the City Attorney, that add the City as an additional insured. Such endorsements must: provide that the insurance required to be furnished by the Contractor will be primary as

regards the City, and that the City's insurance will be excess of and not contribute to the insurance required to be furnished by the Contractor; that the City will receive 30 day written notice of any reduction or cancellation of such insurance required to be furnished by the Contractor; and include a severability of interest clause acceptable to the City.

- E. Contractor agrees that it will not cancel, reduce or otherwise modify the insurance coverage. The Contractor agrees that if it does not keep the required insurance in full force and effect, and such insurance is available at a reasonable cost, the City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of the Contractor and the cost of such insurance may be deducted, at the option of the City, from payments due the Contractor. This shall be in addition to all other legal options available to the City to enforce the insurance requirements.

8.8 INDEMNITIES

- A. To the maximum extent permitted by law, Contractor hereby agrees, at its sole cost and expense, to defend with competent defense counsel approved by the City, protect, indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, volunteers, attorneys, agents (including those City agents serving as independent contractors in the role of City representative), the Engineer and Architect, successors, and assigns (collectively "Indemnitees") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever, in any manner arising out of, incident to, related to, in connection with or resulting from any act, failure to act, error or omission of Contractor or any of its officers, agents, attorneys, servants, employees, Subcontractors, material suppliers or any of their officers, agents, servants or employees, arising out of, incident to, related to, in connection with or resulting from any term, provision, image, plan, covenant, or condition in the Contract Documents, including without limitation, the payment of all consequential damages, attorneys' fees, experts' fees, and other related costs and expenses (individually, a "Claim," or collectively, "Claims"). Contractor shall promptly pay and satisfy any judgment, award or decree that may be rendered against Indemnitees in any such Claim. Contractor shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. This indemnity shall apply to all Claims regardless of whether any insurance policies are applicable or whether the Claim was caused in part or contributed to by an Indemnitees.
- B. Nothing in this Section 8-1.08 shall be construed to encompass Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Contract is subject to Civil Code Section 2782(a) or the City's active negligence to the limited extent that the underlying Contract Documents are subject to Civil Code Section 2782(b), provided such sole negligence, willful misconduct or active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction.

- C. Indemnitees do not and shall not waive any rights that they may possess against Contractor because the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to these Contract Documents. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence.
- D. Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all Claims arising out of or incident to the activities or operations performed by or on behalf of the Contractor regardless of any prior, concurrent or subsequent active or passive negligence by Indemnitees.
- E. The provisions of this Section 8-1.08 shall survive the term and termination of the Contract, are intended to be as broad and inclusive as is permitted by the law of the State, and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.
- F. The Contractor will indemnify, defend and hold harmless the Indemnitees for all liability on account of any patent rights, copyrights, trade names or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the City that any such charges have been paid.
- G. The Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims, including any fines or other penalties, related to failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP. The City may withhold from amounts due or that may become due the Contractor under the Contract amounts that equal or are estimated to equal the amount of Claims, including fines, resulting from failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with provision 12.4 of these General Provisions.
- H. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.

8.9 LICENSES/PERMITS

The Contractor must, without additional expense to the City, obtain all licenses, permits and other approvals required for the performance of the Work.

8.10 CALIFORNIA LABOR CODE REQUIREMENTS

- A. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work will constitute a legal day's work under the Contract
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Contractor and its subcontractors will forfeit as a penalty to the City \$100 for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 et seq.
- D. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and will be made available on request. The Contractor and subcontractors engaged in the performance of the Work must pay no less than these rates to all persons engaged in performance of the Work.
- E. In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the Work must with comply Labor Code Section 1775 which establishes a penalty of up to \$200 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty will be determined by the Labor Commissioner. The Contractor or subcontractor must pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:
 - 1. The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - 2. The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.
 4. Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Work and any amounts due pursuant to California Labor Code Section 1813.
 5. In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the Work, must keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Work, and must otherwise comply with Section 1776. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the City and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776.
- F. In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- G. Attention is directed to the provisions of Sections 1777.5, 1777.6 and 1777.7 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor. The Contractor and all subcontractors on the Project shall comply with the requirements of Sections 1777.5 and Section 1777.6 of the Labor Code in the employment of apprentices. Violation of these requirements shall subject the Contractor and/or subcontractor to the penalties set forth in Section 1777.7 of the Labor Code and/or otherwise provided by law or Contract. Information relative to apprentice standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, from the Division of Apprenticeship Standards or its branch offices, and/or on the DLSR website. Apprentices employed on the Project must at all times Work with or be under the direct supervision of a journeyman or journeymen.

8.11 LAWS AND ORDINANCES

The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the Technical Specifications or Project Plans is to be construed to permit Work not conforming to these codes:

- A. National Electrical Safety Code, U. S. Department of Commerce
- B. National Board of Fire Underwriters' Regulations
- C. California Building Standards Code as adopted by the City
- D. Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- E. Industrial Accident Commission's Safety Orders, State of California
- F. Regulations of the State Fire Marshall (Title 19, California Code of Regulations) and Applicable Local Fire Safety Codes
- G. Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.

8.12 GUARANTY

- A. The Contractor guarantees all of the Work for one year from the date the City accepts the Work, which is when the City Council directs staff to file a Notice of Completion. If that direction is contingent on the completion of any items remaining on a punchlist, the Work herein contracted for shall be deemed to be completed upon the date of the City Engineer's acceptance of the final item(s) on that punchlist.
- B. Upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the City. Additionally, Contractor agrees to defend, indemnify and hold the City harmless from claims of any kind arising from damage, injury or death due to such defects.
- C. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the Contract or at law or equity, the City may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor, and/or call on the Contractor's maintenance bond for the cost of making good such defects and for the City's reasonable legal costs, if any, of recovering against the bond. The parties agree that no certificate given shall be conclusive evidence of the faithful performance of the Contract, either in whole or in part, and that no payment shall be construed to be in acceptance of any defective Work or improper materials. Further, the certificate or final payment shall

not terminate the Contractor's obligations under the guaranty herein. The Contractor will remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the City.

- D. The warranty period for specific items covered under manufacturers' or suppliers' warranties shall commence on the date they are placed into service at the direction of or as approved by the Engineer in writing. All warranties, express or implied, from subcontractors, manufacturers, or suppliers, of any tier, for the materials furnished and work performed shall be assigned, in writing, to the City, and such warranties shall be delivered to the Engineer prior to acceptance of the Contractor's performance of this Contract.

8.13 SAFETY

- A. In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the City nor its officials, officers, employees, agents, volunteers or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities engaged in the performance of the Work. The Contractor agrees that neither the City, nor the Engineer will be responsible for having hazards corrected and/or removed at the Work site. The Contractor agrees that the City will not be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees with respect to the Work and the Work site, the Contractor will be responsible for not creating hazards and for having hazards corrected and/or removed, for taking appropriate, feasible steps to protect the Contractor's employees from such hazards and that the Contractor has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers.
- B. Review and inspection by the City, the Architect or Engineer, and/or other representatives of the City of the Contractor's performance of the Work will not constitute review of the adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the Work site is maintained and the Work is performed in a safe manner.

- C. The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the Work site is maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.
- D. Within ten (10) working days following notice of award the Contractor must submit to the City a copy of the Contractor's Safety Plan.
- E. The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 and following of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.

8.14 ASSIGNMENT OF UNFAIR BUSINESS PRACTICE CLAIMS

In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the City all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Contract. This assignment will be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.

8.15 REAL TIME KINETICS (RTK)

The Contractor shall provide a RTK Survey of all new City-owned utilities (water, sewer, storm drain, etc.) installed. The survey shall incorporate horizontal and vertical Global Positioning System (GPS) readings taken at the following locations:

- A. At every fifty (50) foot interval along each new utility,
- B. Every horizontal and vertical bend,
- C. Every utility line crossing, and;
- D. Every utility appurtenance (valves, manholes, inlets, etc.).

Each reading shall include two (2) shots; one measuring top of pipe and the other measuring elevation the final grade surface elevation directly on top of the pipe. The reading output for each shot shall be in rectangular coordinates (latitude and longitude in feet) and shall be referenced to stationing along the utility.

The RTK data shall be listed in a summary table (using Microsoft Excel, Version 2007) with the following column headers:

- A. Pipe stationing,

- B. Latitude coordinate,
- C. Longitudinal coordinate, and;
- D. General location comment (bend, crossing, etc.).

The data shall be formatted to print in a portrait view. The coordinate system shall be in accordance with NAD 83 State Plan California Zone II in feet. The RTK Survey data summary shall be updated weekly and submitted in hard copy. An updated electronic copy shall be made available to the City Engineer at any time during the project. Final hard and electronic copies shall be provided to the City Engineer prior to City acceptance.

The Contractor shall provide rectangular coordinates for any new street light, street sign, and accessible ramp following the same format as shown in this section.

SECTION 9: MEASUREMENT AND PAYMENT

9.1 F.O.B.

All shipments must be F.O.B. destination to the Work site and/or other sites indicated in the Contract Documents. The Contract Price is all-inclusive (including sales tax). There will be no additional compensation paid for containers, packing, unpacking, drayage or insurance.

9.2 PAYMENT

- A. The Contractor must submit to the Engineer his or her partial payment estimate on the 15th day of the month. When the 15th falls on a weekend or holiday submittal must be on the first workday prior to the 15th. The partial payment estimate must be a verified application for payment and schedule of values supported by a statement showing all materials actually installed during the preceding month and the cost of labor actually expended in the performance of the Work. Unless otherwise provided in the Contract Documents, no allowances or payments will be made for material or equipment not placed at the Work site.
- B. Within ten (10) days after the issuance of the Notice to Proceed, the Contractor shall furnish to the City a detailed Schedule of Values giving a complete breakdown of large lump sum prices and items which include numerous subdivisions of work. The Contractor and City shall jointly review the Schedule of Values and make any adjustments in value allocations if, in the opinion of the City, changes are necessary to establish fair and reasonable allocation of values for the Work components. Front end loading will not be permitted. If, in the City's judgment, more detail (i.e. more items of work) is necessary, the Contractor shall add the additional items identified by the City. The City may also require reallocation of Work components from items in the preliminary schedule if such allocation is necessary. The Contractor shall submit any necessary revisions for the completed Schedule of Values within 15 days from the Notice to Proceed. The costs indicated in making up this breakdown will be used as a basis for partial payments and shall not be considered as fixing a basis of additions or deductions from the contract.
- C. To be eligible for payment the Contractor's applications for payment must be accompanied by certified payroll reports, including "Statement of Non-Performance" for periods where no Work was performed. Certified payroll shall be prepared in accordance with California Labor Code Section 1776 and the Contract for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months. Applications for payment will not be processed without certified payroll reports.
- D. In accordance with California Public Contract Code Section 20104.50, the City will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven days after receipt by the City, along with a written description of the reasons why the application is improper. The Contractor's failure to submit a schedule by the time specified in Section 3-1.08, or its submission of a schedule to which the City has

taken any uncorrected exception, will serve as a basis for returning an application for payment in its entirety.

- E. Unless the Contractor has elected to post securities in lieu of retention in accordance with California Public Contract Code Section 22300 and the Contract, and the Contractor and the City have executed an escrow agreement in accordance with the Public Contract Code and the Contract, the City will make progress payments to the Contractor in accordance with applicable law in the amount of ninety five (95) percent of the value of the labor actually performed and the material incorporated in the Work as specified in Contractor's verified application for payment upon approval by the City's authorized representative(s). Payment of progress payments will not be construed as acceptance of the Work performed. If the Contractor has elected to post securities in lieu of retention in accordance with Public Contract Code Section 22300 and the Contract and the Contractor and the City have executed an escrow agreement in accordance with the Public Contract Code and the Contract, the City will make payments to the Contractor or the Contractor's escrow agent in accordance with such escrow agreement.
- F. Wherever the estimated quantities of Work to be done and materials to be furnished on a unit price basis under the Contract are specified in any of the Contract Documents, including the proposal, such quantities are specified for purposes of comparing bids, and the right is expressly reserved, except as otherwise expressly provided, to increase or diminish such quantities as may be deemed reasonably necessary or desirable by the Engineer to complete the Work. No such increase or diminution will be a basis for claims for adjustments in the Contract Price other than adjustments necessary to reflect the impacts of such changes in quantities based on the applicable contract prices and/or pursuant to Section 4 of these General Provisions.
- G. In accordance with California Public Contract Code Section 20104.50, if the City fails to make a progress payment within thirty (30) days of receipt of an undisputed, properly submitted application for payment, the City will pay the Contractor interest equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of days available to the City to make a payment without incurring an interest obligation pursuant to this provision and California Public Contract Code Section 20104.50 will be reduced by the number of days, if any, by which the City has delayed return of an application for payment beyond the seven day return requirement set forth in Section 9-1.02(d).
- H. The City will pay the Contractor's final invoice in accordance with applicable law and this Section 9 following acceptance of the Work provided that:
 - 1. The Contractor has furnished evidence satisfactory to the City that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have been released by valid release or release bond acceptable to the City.

2. No claim has been presented to the City by any person based upon any acts or omissions of the Contractor or any subcontractor engaged in the performance of the Work.
3. No other claim or dispute exists under the Contract or applicable law concerning payment of the Contractor's final invoice and/or release of the Contract retention.
4. The Contractor has filed with the City the Maintenance Bond provided in the Contract Documents with duly notarized signatures of an authorized representative of the Contractor and an attorney-in-fact of an admitted surety insurer acceptable to the City and such Maintenance Bond binds the Contractor as Principal and the Surety in accordance with its terms in the amount of 10% of the final Contract Price.

9.3 NON-ALLOWABLE DIRECT CHARGES

The following costs are not allowable direct charges under the Contract. The following costs may only be paid under the Contract, if at all, as part of any allowance for contractor overhead and/or profit established under the Contract.

- A. Labor costs in excess of applicable prevailing wages pursuant to the Contract and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for contractor and subcontractor employees engaged in the performance of the Work, or in excess of the labor costs specified in Section 4.5 of these General Provisions in the case of cost impacts involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the City. However, in no event will allowable direct labor charges under the Contract include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.
- B. Superintendent labor and clerical labor.
- C. Bond premiums
- D. Insurance in excess of that required under Section 8.7
- E. Utility costs
- F. Work Site office expenses
- G. Home office expenses
- H. Permit or license costs

9.4 RETENTION

The City or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:

- A. Defective work not remedied or uncompleted work.
- B. Claims filed or reasonable evidence indicating probable filing of claims.
- C. Failure to properly pay subcontractors or to pay for material or labor.
- D. Reasonable doubt that the Work can be completed for the balance then unpaid.
- E. Damage to another contractor.
- F. Damage to the City.
- G. Damage to a third party.
- H. Delay in the progress of the Work, which, in the City's judgment, is due to the failure of the Contractor to properly expedite the Work.
- I. Liquidated damages or other charges that apply to the Contractor under the Contract.
- J. Any other lawful basis for withholding payment under the Contract.

9.5 SECURITIES IN LIEU OF RETENTION

In accordance with Public Contract Code Section 22300, except where federal regulations or polices do not permit substitution of securities, the Contractor may request that it be permitted to substitute securities in lieu of having retention withheld by the City from progress payments when such payments become due or, in the alternative, Contractor may request that the City make payments of earned retentions directly to an agreed upon designated escrow agent at Contractor's expense. If the Contractor selects either one of these alternatives, the provisions of this Section 9-1.05 shall control.

A. Substitution of Securities for Performance Retention

At some reasonable time before any progress payment would otherwise be due and payable to Contractor in the performance of Work under these Contract Documents, the Contractor may submit a request to the City in writing to permit the substitution of retentions with securities equivalent to the amount estimated by the City ("estimated amount of retention") to be withheld. Contractor shall deposit such securities with the City or may, in the alternative, deposit such securities in escrow with a State or federally chartered bank in California, as the escrow agent, and at the Contractor's expense. Such securities will be the equivalent or greater in value of the estimated amount of retention. If the Contract is modified by written Modifications or Change Orders or Contractor otherwise becomes entitled to receive an amount more than the Contract amount at the time the securities are deposited, the Contractor shall, at the request of the City, deposit with the City or

escrow agent, whichever is applicable, additional securities within a reasonable time so that the amount of securities on deposit with the City or escrow agent is equivalent or greater in value than the amount of retention the City would otherwise be entitled to withhold from progress payments due or to become due to the Contractor as the Work progresses. The City shall withhold any retention amount that exceeds the security amount until the additional securities are deposited and, if the deposit is with an escrow agent, the City has confirmation from that escrow agent of the new total value of securities. Upon satisfactory completion of the Contract, which shall mean, among other things, that the City is not otherwise entitled to retain proceeds from progress payments as elsewhere provided in the Contract or under applicable law, the securities shall be returned to the Contractor. The City shall, within its sole discretion, determine whether the amount of the securities on deposit with the City or escrow agent is equal to or greater than the amount of estimated retention of progress payments which could otherwise be held by the City if the Contractor had not elected to substitute same with securities.

B. Deposit of Retention Proceeds with an Escrow Agent

As an alternative to the substitution of securities, as provided above, or the City otherwise retaining and holding retention proceeds from progress payments, the Contractor may request the City to make payments of retentions earned directly to an escrow agent with the same qualifications as required in paragraph (a) above and at the expense of the Contractor. At its sole expense, the Contractor may direct the investment of such retention payments into only such securities as mentioned in paragraph (c) below and shall be entitled to interest earned on such investments on the same terms provided for securities deposited by Contractor. Upon satisfactory completion of the Contract, which shall mean when the City would not otherwise be entitled to withhold retention proceeds from progress payments had the Contractor not elected to have such proceeds deposited into escrow, Contractor shall be allowed to receive from the escrow agent all securities, interest and payments deposited into escrow pursuant to the terms of this Section. The Contractor shall pay to each Subcontractor, not later than ten (10) Days of receipt of payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount withheld to insure performance of the Contractor.

C. Subcontractor Entitlement to Interest

Any Contractor who elects to receive interest on moneys withheld in retention by the City shall, at the request of any Subcontractor performing more than five percent (5%) of the Contractor's total Bid, make that option available to the Subcontractor regarding any moneys withheld in retention by the Contractor from the Subcontractor. If the Contractor elects to receive interest on any moneys withheld in retention by the City, then the Subcontractor shall receive the identical rate of interest received by the Contractor on any retention moneys withheld from Subcontractor by the Contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the Subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the Subcontractor. If the Contractor elects to substitute securities in lieu of retention,

then, by mutual consent of the Contractor and Subcontractor, the Subcontractor may substitute securities in exchange for the release of moneys held in retention by the Contractor. The Contractor shall pay each Subcontractor, not later than ten (10) Days after receipt of escrow moneys, the amount owed to each Subcontractor from the moneys plus the respective amount of interest earned, net of costs attributed to the retention held from each Subcontractor, on the amount of retention withheld to insure performance of the Subcontractor.

D. Securities Eligible for Investment

Securities eligible for investment shall include those listed in California Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed upon between the Contractor and the City. The Contractor shall be the beneficial owner of any securities substituted for any monies withheld and shall receive any interest thereon.

E. Escrow Agreement for Security Deposits in Lieu of Retention

The escrow agreement that shall be used for the deposit of securities in lieu of retention shall substantially conform to the form prescribed in California Public Contract Code Section 22300(f).

F. Inconsistencies with Prevailing Statutory Requirements

If there is any inconsistency between or differences in Public Contract Code Section 22300 and the terms of this provision, or any future amendments thereto, Section 22300 shall control.

SECTION 10: PROJECT ACCEPTANCE AND CLOSEOUT

10.1 OCCUPANCY

The City reserves the right to occupy or use any part or parts or the entire of the Work before the Work is fully completed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the City's rights under the Contract, any Contract bonds, or at law or equity. Occupancy or use will not waive the City's rights to assess liquidated damages in accordance with Section 7 after the date of such occupancy or use.

10.2 WORK COMPLETION AND FINAL INSPECTION

When the Contractor considers the Work is completed, the Contractor will submit written certification to the Engineer specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the City's representative and are operational. The City and/or the City's authorized representatives will make an inspection to verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Engineer. Upon receiving a notice of correction, the City or the City's authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within 30 working days after the issuance of the punch list.

10.3 WORK ACCEPTANCE

- A. All finished Work will be subject to inspection and acceptance or rejection by the City, the Engineer, and the Architect or other government agencies having jurisdiction over the Work. Final acceptance of the Work, which is when the City Council directs staff to file a Notice of Completion, will be at the discretion of the City.
- B. The City will accept the Work in writing only when the Work has been completed to the City's reasonable satisfaction. Progress payments will in no way be construed as acceptance of any part of the Work.
- C. In evaluating the Work, no allowance will be made for deviations from the Technical Specifications, Project Plans or other Contract Documents unless already approved in writing in accordance with the requirements of Section 4, above.
- D. The fact that the Work and materials have been inspected from time to time and that progress payments have been made does not relieve the Contractor of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.

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SECTION 11: REMEDIES AND DISPUTES

11.1 FAILURE TO CORRECT WORK

Within ten (10) working days of receiving written notice from the City describing Work that is defective or that is otherwise not in accordance with the requirements of the Contract and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the City written notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the City's notice and the Contract. If the Contractor and/or the Contractor's sureties do not give the City written notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the City's notice, then the City may correct such work and/or have such work corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other remedies that the City may have under the Contract and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the contractor.

11.2 TERMINATION

- A. In accordance with California Public Contract Code Section 7105, in addition to all other available remedies that the City may have under the Contract, and at law or equity, the City may terminate the Contract:
1. If the Contractor or any of its subcontractors engaged in the performance of the Work fails to timely perform the Work and/or any of the Contractor's material obligations under the Contract Documents, including but not limited to submission of an acceptable schedule, that have accrued except for due to reasons beyond the control of the Contractor pursuant to the Contract Documents.
 2. If the Contractor is adjudged bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its creditors.
 3. If the Contractor or any of the subcontractors engaged in the performance of the Work persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials for the timely completion of the Work.
 4. If the Contractor fails to make prompt payment to subcontractors engaged in the performance of the Work or for material or labor used in the performance of the Work in accordance with the Contract Documents and applicable law.
 5. If the Contractor or any subcontractors engaged in the performance of the Work persistently disregards laws or ordinances applicable to the performance of the Work, or the instructions of the City, the Engineer, the Architect, or other authorized representatives of the City.

6. For any reason or for no reason, at the City's sole discretion.
- B. If the City intends to terminate the Contractor's control of the Work for any of the reasons specified in Section 11-1.102(a) 1 through 5, above, the City will immediately serve written notice to the Contractor and its sureties in accordance with the Contract Documents. Notice of the City's intent to terminate the Contract will be given by registered or certified mail and specify the grounds for termination, the required cure and the time by which the cure must be effected. Upon receipt of notice of the City's intent to terminate the Contract for any of the reasons specified in Section 11-1.102(a) 1 through 5, the Contractor will have ten (10) days from receipt of the notice or a longer time specified in the notice to cure its default. If the Contractor does not affect the required cure by the time specified in the notice, the City will issue a written notice of termination to the Contractor and its sureties by registered or certified mail. The notice of termination will specify: that upon receipt of the notice the Contractor's right to perform or complete the Work, including on behalf of the Contractor's sureties, is terminated; that the Contractor's sureties will have the right to take over and complete the Work and perform all of the Contractor's remaining obligations that have accrued under the Contract; and that if the Contractor's sureties do not both give the City written notice of their intention to take over and perform the Contract and commence completion of the Work and performance of all of the Contractor's remaining obligations that have accrued under the Contract within ten (10) days after receipt of notice of termination that the City may declare the Contractor's sureties in default and take over the completion of the Work or have the Work completed for the account and at the expense of the Contractor and its sureties, and the Contractor and its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other available remedies that the City may have under the Contract Documents and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.
- C. Upon termination of the Contractor's control of the Work for any of the reasons specified in Section 11-1.102(a) 1 through 5, the Contractor will, if so directed by the City, immediately remove from the Work site any and all materials and personal property belonging to the Contractor which have not been incorporated in the Work and the Contractor and its sureties will be liable upon their bond for all damages caused the City by reason of the Contractor's failure to complete the Work.
- D. Upon termination of the Contractor's control of the Work for any of the reasons specified in Section 11-1.102(a) 1 through 5, above, the City reserves the right to refuse tender of the Contractor by any surety to complete the Work.
- E. If the City completes or has completed any portion of, or the whole of the Work, following termination of the Contractor's control of the Work for any of the reasons specified in Section 11-1.102(a) 1 through 5, above, the City will neither be liable for nor account to the Contractor or the Contractor's sureties in any way for the time within which, or the manner in which such Work is performed, or for any changes made in such Work or for the money expended in satisfying claims and/or suits and/or other obligations in connection with completing the Work. If, following termination of the Contractor's control of the Work for any of the reasons specified in Sections Section 11-1.102(a) 1 through 5, above, the unpaid balance of the Contract Price exceeds the expense of completing the Work, including

compensation for additional legal, managerial and administrative services and all other amounts due for the completion of the Work and/or satisfaction of claims of the City and/or others arising out of the Contract and any other charges that apply to the Contractor under the Contract, the difference will be paid to the Contractor. If such expenses of completing the Work exceed the unpaid balance of the Contract Price, the Contractor or its sureties will pay the difference to the City.

- F. If the Contract or Contractor's control of the Work is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor.
- G. In accordance with California Government Code Section 4410, in the event a national emergency occurs, and public work being performed by contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the City and the Contractor may, by written agreement, terminate this Contract. In accordance with California Government Code Section 4411, such an agreement will include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party will pay to the other or any other person, under the facts and circumstances in the case. Compensation to the Contractor will be determined on the basis of the reasonable value of the work done, including preparatory work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Work for which there is a separate contract price, the Contract price will control. The parties may in any other case adopt the Contract price as the reasonable value of the work or any portion of the work done.

11.3 CONTRACT DISPUTE RESOLUTION PROCESS

In accordance with Public Contract Code Section 9204, this section shall apply to any claim by a Contractor in connection with the Project.
For purposes of this section:

- A. "Claim" means a separate demand by a Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - 1. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City Engineer under a contract for the Project.
 - 2. Payment by the City of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the contract for the Project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - 3. Payment of an amount that is disputed by the City Engineer.

Upon receipt of a claim pursuant to this section, the City Engineer to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the City Engineer and Contractor may, by mutual agreement, extend the time period provided in this section.

The Contractor shall furnish reasonable documentation to support the claim.

If the City Engineer needs approval from City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City Engineer shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City Engineer issues its written statement.

If the Contractor disputes the City Engineer's written response, or if the City Engineer fails to respond to a claim issued pursuant to this section within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City Engineer shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City Engineer shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City Engineer issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the City Engineer and the Contractor sharing the associated costs equally. The City Engineer and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

Unless otherwise agreed to by the City Engineer and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

This section does not preclude a City Engineer from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

Failure by the City Engineer to respond to a claim from a Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City Engineer's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the Contractor.

Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a City Engineer because privity of contract does not exist, the Contractor may present to the City Engineer a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the City Engineer shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City Engineer and, if the original Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a City Engineer may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

Nothing in this section shall impose liability upon a City Engineer that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

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SECTION 12: CONTROLS AND RESTRAINTS

12.1 DESCRIPTION OF WORK

The Work in general consists of the construction of such items of work as required to complete the project in accordance with this Contract, the Project Plans and Technical Specifications.

The estimate of the quantities of work to be done is approximate only, being as a basis for the comparison of bids, and the City does not expressly or by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount or any portion of the work as directed by the Engineer.

Incidental items of construction necessary to complete the whole work in a satisfactory and acceptable manner as shown on the Project Plans and as provided for in the Technical Specifications and not specifically referred to in this section, will be understood to be furnished by the Contractor.

12.2 CONSTRUCTION LIMITATIONS

The Contractor will be expected to conduct his or her operations in a manner that creates minimum damage to the natural vegetation and landscape. Care must be exercised to avoid hazards that may cause injury to persons, animals or property either during working hours or after work hours, which will include dust control, backfilling trenches immediately following pipe laying and temporary fencing as required. Excavation made under the Contract must be backfilled before leaving the work for the night.

The Contractor will be responsible for obtaining permission from the property owners for any construction outside of the Work site or easements as shown on the plans. Equipment will be restricted to the immediate area of construction, pipe trenches will be backfilled as soon as possible.

Receptacles for construction residue, including oil, cleaning fluids, and litter, must be covered. Such residues must be disposed of in a proper manner.

Construction activity within the existing right-of-way must be scheduled to minimize traffic inconvenience and safety hazards to motorists, pedestrians and cyclists.

12.3 ORDER OF WORK

When required by the special provisions or plans, the Contractor shall follow the sequence of operations as set forth therein. Full compensation for conforming to those requirements will be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

12.4 STORM WATER POLLUTION PREVENTION

Unless otherwise stated in the project documents, the Contractor must perform the Work in compliance with all applicable requirements of the California State Water Resources Control Board pursuant to Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 ("General Permit") adopted

pursuant to regulations adopted by the U.S. Environmental Protection Agency (USEPA) on November 16, 1990 and codified in 40 Code of Federal Regulations Parts 122, 123, 124. The General Permit applies to storm water discharges from construction sites that disturb land equal to or greater than one acre, and as such is required for this project. The Contractor shall develop and implement a storm Water Pollution Prevention Plan ("SWPPP") that specifies Best Management Practices ("BMPs") which will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters. At a minimum, the SWPPP shall include the following Best Management Practices (BMP's):

- A. Pollution Prevention BMPs: The SWPPP shall identify all construction sites and staging activities; work schedules; temporary storage and borrow areas; construction materials handling and disposal; dewatering and treatment and disposal of groundwater removed from excavations; discharge locations and methods; and final stabilization and cleanup measures.
- B. Erosion Control: BMPs shall be included to stabilize exposed soils, minimize offsite runoff, remove sediment from onsite runoff before it leaves the site, slow runoff rates across construction sites, and identify post construction soil stabilization BMPs. Appropriate temporary and long-term seeding, mulching, and other erosion control measures shall be identified.
- C. Good Housekeeping Measures: BMPs shall be included to reduce exposure of construction sites and materials storage to storm water runoff, including tracking control facilities, equipment washing, litter and construction debris, designated refueling and equipment inspection/maintenance practices, and hazardous material spill control and response measures.
- D. BMP Inspection and Monitoring: The SWPPP shall describe clear objectives for evaluating environmental compliance. Inspection and monitoring protocols, environmental awareness training, contractor and agency roles and responsibilities, reporting procedures, and communication protocols shall be identified.

Portions of the Work that may be subject to the General Permit include, but are not limited to clearing, grading, stockpiling and excavation.

Prior to commencing performance of the Work, the Contractor must prepare and file a Notice of Intent to obtain coverage under the General Permit, a vicinity map, and the applicable fee, with the California State Water resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, California 95812-1977.

Prior to commencing performance of the Work the Contractor must also prepare a SWPPP in accordance with all applicable requirements of the General Permit and submit the SWPPP to the Engineer for approval.

The SWPPP must include a Project site map. Geometric equations, notes, details, and all data not related to water pollution control work shall be removed to provide clarity. A copy of the Project Plans must be used as a base plan, with the pertinent stage of construction shown as an overlay to accurately reflect Project Site conditions at various phases of construction.

The Contractor must revise and update the SWPPP, and submit the revisions to the Engineer for approval, whenever there is a change in construction operations that may affect the site drainage patterns or discharge of pollutants to surface waters, groundwaters, or a separate municipal storm sewer system.

Any fines, damages, Work delays or other impacts that result from failure of the Contractor or privities or agents of the Contractor to fully comply with the requirements of the General Permit or to fully implement the SWPPP will be solely the responsibility of the Contractor.

The Contractor must keep a copy of the General Permit, together with updates and revisions, at the Project Site and provide copies of the SWPPP at the request of the City.

12.5 MAINTAINING TRAFFIC AND PEDESTRIAN OPERATIONS

The Contractor must so conduct his or her operations so as to cause the least possible obstruction and inconvenience to public traffic. Unless otherwise approved by the Engineer, all traffic must be permitted to pass through the Work.

Due to the need to accommodate and minimize inconvenience to the public, unless expressly specified or approved in writing by the Engineer, no road closures will be permitted. Public vehicular and pedestrian traffic must be allowed to travel through the Work area with an absolute minimum of interruption or impedance unless otherwise provided for in the Special Provisions or approved in writing by the Engineer. The Contractor must make provisions for the safe passage of pedestrians around the area of Work at all times.

Residents affected by construction must be provided passage and access through the Work area to the maximum extent possible. Where existing driveways occur on the street, the Contractor must make provisions for the trench crossings at these points, either by means of backfill or by temporary bridges acceptable to the Engineer, so that the length of shut-down of any driveway is kept to a minimum. In addition, all driveways must be accessible at the end of each workday, and no driveway or property access may be closed for more than four (4) hours during the workday or as allowed by the City. Access to driveways, houses, and buildings along the road or street must be as convenient as possible and well maintained, and all temporary crossings must be maintained in good condition. To minimize the need for and complexity of detours, not more than one crossing or street intersection or road may be closed at any one time without the written approval of the Engineer. All detour signs must have name of streets that direct the motorist.

The Contractor must provide multiple, advance written notices of closures to all affected property owners in a form approved by the Engineer.

Except as otherwise approved by the Engineer, the stockpiling or storing of material in City streets or right of way shall be prohibited. Where this is unavoidable, all such materials must be piled or stored in a manner that will not obstruct sidewalks, driveways, or pedestrian crossings. Gutters and drainage channels must be kept clear and unobstructed at all times. All such materials shall be stored and handled in a manner that protects City streets, sidewalks, or other facilities from damage.

Where approved in advance by the Engineer, the Contractor must construct and maintain detours for the use of public traffic at his or her own expense. Failure or refusal of the

Contractor to construct and maintain detours so approved at the proper time will be a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity. Such remedies include, but are not limited to, termination pursuant to Section 11.

Throughout performance of the Work the Contractor must construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for the public and private traffic at all times including Saturdays, Sundays and holidays.

The Contractor will be responsible for keeping all emergency services, including the Fairfield police and fire departments informed of obstructions to, or detours around any public or private roads caused by reasons of his or her operations.

The Contractor must comply with the State of California, Department of Transportation Manual of warning signs, lights, and devices for use and performance of work within the job site.

The fact that rain or other causes, either within or beyond the control of the Contractor, may force suspension or delay of the Work, shall in no way relieve the Contractor of his or her responsibility of maintaining traffic through the Project and providing local access as specified in this section. The Contractor must, at all times, keep on the job such materials, force and equipment as may be necessary to keep roads, streets and driveways within the Project open to traffic and in good repair and shall expedite the passage of such traffic, using such force and equipment as may be necessary.

Full compensation for conforming to the requirements of this section will be deemed included in the prices paid or the various Contract items of Work and no additional allowances will be made therefore.

12.6 PUBLIC SAFETY

The Contractor must at all times conduct the Work in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California, to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the work.

No pedestrian or vehicle access way may be closed to the public without first obtaining permission of the Engineer.

Should the Contractor fail to provide public safety as specified or if, in the opinion of the Engineer, the warning devices furnished by the Contractor are not adequate, the City may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations and the Contractor will be liable to the City for, and the City may deduct from amounts due or that may become due the Contractor under the Contract, all costs incurred including, but not limited to, administrative costs.

Nothing in this section will be construed to impose tort liability on the City or Engineer.

12.7 PROTECTION OF EXISTING FACILITIES AND PROPERTY

The Contractor must notify Underground Service Alert (USA) for marking the locations of existing underground facilities.

Subject to Section 5 of these General Provisions, the Contractor must take all necessary measures to avoid injury to existing surface and underground utility facilities in and near the Work site. Subject to Section 5 of these General Provisions, no error or omission of utility markouts will be construed to relieve the Contractor from his responsibility to protect all underground pipes, conduits, cables or other structures affected by the work.

The existing underground facilities in the area of Work may include telephone, television and electrical cables, gas mains, water mains, sewer pipe and drainage pipe. The various utility companies must be notified before trenching begins and at such other times as required to protect their facilities. Subject to Section 5 of these General Provisions, all underground facilities must be located and exposed ahead of trenching to prevent damage to the facilities, and to determine the depth and character of all facilities that cross or infringe on the trench prism. The Contractor must immediately notify the Engineer of any facilities found. If damage should occur to the existing facilities, the utility company and the City must be notified immediately and, subject to Section 5 of these General Provisions, repairs acceptable to the utility company must be made at the Contractor's expense.

The Project Plans show the underground utilities on the site of the construction insofar as they are known to the City. The drawings may not show facilities apparent from visual inspection of the site or service laterals or appurtenances, the existence of which can be inferred from the presence of other visible facilities such as buildings, meters, junction boxes, etc. on or adjacent to the construction site.

If in the performance of the Work an existing utility is encountered that is not shown on the Project Plans and is not apparent or inferable from visual inspection of the Project site, the Inspector must be notified immediately. The Engineer will determine, subject to Section 5 of these General Provisions, whether the Project Plans or Technical Specifications should be modified, or whether the existing utility should be relocated or whether the Contractor must work around the existing utility. Subject to Section 5 of these General Provisions, the Contractor must replace, at his or her own expense, in as good condition as they were prior to the start of construction, all existing improvements and surroundings damaged by his or her operation. Reconstruction of all existing improvements must conform to the City Standards under the direction of and subject to the acceptance by the Engineer.

Subject to Section 5 of these General Provisions, should the Contractor fail to take adequate measures to avoid injury or damage to the facilities described above, the City may take any actions necessary to protect such facilities from the Contractor's operations. Subject to Section 5 of these General Provisions, the City may withhold the cost of injury to existing surface and underground utility facilities in and near the Work site from amounts due or that may become due the Contractor.

12.8 PRECONSTRUCTION CONFERENCE

A pre-construction conference will be scheduled, at which time the Contractor must present his or her proposed work schedule in accordance with Section 3.8 of these General Provisions, information concerning offsite yards, subcontractors, location of disposal and stock pile areas, and traffic control plans. All such schedules will be subject to the approval of the Engineer and the applicable agencies

12.9 OWNER NOTIFICATION

The Contractor must notify all property owners and businesses affected by the Work at least 48 hours before Work is to begin. The notice must be in writing in the form of a door hanger, and must indicate the Contractor's name and phone number, type of work, day(s) and time when Work will occur. Notices must be reviewed in advance and approved by the City.

12.10 EMERGENCY SERVICE PROVIDERS NOTIFICATIONS

The Contractor must furnish the name and phone number of a representative that can be contacted in the event of an emergency. Said information must be reported to the City Police Department dispatcher, and updated as required to provide 24-hour phone access.

12.11 CLEAN UP

Attention is directed to **Section 4-1.13 of the Caltrans Standard Specifications**, which section is made a part of this Contract.

Before final inspection of the work, the Contractor must clean the construction site and all ground occupied by him in connection with the work, of all rubbish, excess material, falsework, temporary structures and equipment. All parts of the work shall be left in a neat and presentable condition.

Nothing herein shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Engineer.

12.12 PAYMENT

Unless otherwise noted, payment for all work and work requirements specified in these Special Provisions shall be considered as included in the Contract Price and no additional allowances shall be made therefore.

12.13 CONSTRUCTION STAKING

Attention is directed to Section 3.9 of these General Provisions for information on Construction Staking.

12.14 MATERIALS TESTING ALLOWANCE

Attention is directed to Section 3.10 of these General Provisions for information on Materials Testing Allowance.

12.15 OBSTRUCTIONS

Attention is directed to Section 15, "Existing Facilities", of the Caltrans Standard Specifications, which section is made a part of this Contract; except that, references to the following section of the Caltrans Standard Specifications are hereby deleted; this section is not a part of this Contract: 9-1.04, "Force Account."

Attention is directed to the existence of overhead and underground power, telephone, and television cable poles, underground sewer mains and laterals, underground gas mains, and underground water mains and laterals within the area in which construction is to be performed.

Prior to starting work, the Contractor must (a minimum of 2 working days in advance) call Underground Service Alert (USA), toll free, at (800) 642-2444 and provide USA with all necessary data relative to the proposed work. USA will accept calls and process information to participating agencies who have underground facilities in the area between the hours of 7:30 a.m. and 5:00 p.m. daily, except Saturdays, Sundays, and holidays. Between the hours of 5:00 p.m. and 7:30 a.m. calls will be recorded and then processed after 7:30 a.m. For emergency situations, after hours and on Saturdays, Sundays and holidays, the Contractor shall contact the organization owning the affected facility. Upon notification, agencies having facilities in the area of the proposed excavation will mark their locations in the field using USA standard colors and codes to identify the facility.

The Contractor will be required to work around public and private utility facilities and other improvements that are to remain in place within the construction area and he will be held liable to the owners of such facilities or interference with service resulting from his operations.

12.16 HOURS OF WORK

Unless otherwise specified herein, all construction activity, except for emergency situations, will be confined to Monday through Friday between the hours of 7:00 a.m. and 5:00 p.m., to minimize nuisances to local residents. Mufflers and/or baffles will be required on all construction equipment to control and minimize noise. The Contractor must comply with all applicable noise regulations in the City's Zoning Ordinance.

Saturday, Sunday, holidays and overtime shall not be regarded as working days. Work shall not be allowed on non-working days without the expressed approval of the Engineer. The Contractor shall make a request for approval in writing with the stipulation (implied or expressed) that the Contractor shall pay for all overtime labor charges at the rate of \$65 per hour per inspector and/or resident engineer. The Contractor shall be responsible for overtime after an eight hour day for City staff (7:00 a.m. to 3:30 p.m.). All overtime labor charges shall be deducted from the final payment along with any liquidated damages. The City retains the right to invoice during the project.

Work necessary for the proper care and protection of work already performed or in case of emergency may be allowed without permission of the Engineer.

12.17 DUST CONTROL

The Contractor must furnish all labor, equipment, and means required and carry out effective measures wherever and as often as necessary to prevent its operation from producing dust in amounts damaging to property, cultivated vegetation, or domestic animals, or causing a nuisance. The Contractor will be responsible for any damage resulting from any dust originating from the performance of the Work. The use of water resulting in mud on streets, sidewalks, or driveways, will not be permitted as a substitute for sweeping or other methods of dust control. The Contractor may not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.

Dust control must conform to the provisions in Section 18, "Dust Palliatives", of the Caltrans Standard Specifications, which section is made a part of this Contract

No separate payment will be made to the Contractor for controlling dust, whether caused by construction traffic or by public traffic only. Full compensation for dust control will be considered as included in the Contract Price and no additional compensation will be allowed therefore.

12.18 CONSTRUCTION UTILITIES

Power, sewer and water for construction purposes is the responsibility of the Contractor.

The Contractor may obtain a construction water meter permit from the City.

No separate payment will be made to the Contractor for construction utilities, and full compensation for construction utilities will be considered as included in the Contract Price and no additional compensation will be allowed therefore.

12.19 SANITARY PROVISIONS

The Contractor must provide all sanitation facilities for the use of its labor forces.

No separate payment will be made to the Contractor for sanitation needs and provisions. Full compensation will be considered as included in the Contract Price and no additional compensation will be allowed therefore.

12.20 PROTECTION AND RESTORATION OF VEGETATION

Trees, lawns, shrubbery and vegetation that are not to be removed must be protected from damage or injury. Existing trees, shrubs, and other plants, that are not to be removed and are injured or damaged by reason of the Contractor's operations, must be replaced by the Contractor in accordance with the requirements in Section 20-4.03F, "Replacement Plants", of the Caltrans Standard Specifications. Section 20-4.03F of the Caltrans Standard Specifications is made a part of this Agreement.

When it is necessary to excavate adjacent to existing trees, shrubs, or hedges, the Contractor must use all possible care to avoid injury to the trees, shrubs, or hedges and their roots. No roots or limbs two inches (2") or larger in diameter may be cut without the express approval of the Engineer.

All roots two inches (2") in diameter and larger left in place must be wrapped with burlap to prevent scarring or excessive drying. When it is necessary to cut limbs and branches of trees to provide clearance for equipment used in construction, the Contractor must repair the damaged areas by properly painting with an emulsified asphalt type seal. All cuts through 1/2" or larger roots and limbs must be hand trimmed and cleanly cut before being repaired.

12.21 CULTURAL RESOURCES

In accordance with the National Historic Preservation Act of 1966 (U.S.C. 470), the procedures in Sections 12.21.2, 12.21.3, 12.21.4, and 12.21.5 are implemented to insure the protection of cultural resources and fair compensation to the Contractor for delays attendant to the cultural resources investigation. Contractor hereby agrees to comply with these procedures.

12.21.1 SURPLUS MATERIAL

All material removed or excavated during the course of construction will be surplus. All surplus material will be the property of the Contractor and be disposed of outside the right-of-way, unless the City elects to salvage certain objects that are determined to be of historical interest. The City reserves the right of ownership of all objects that it elects to salvage, and the Contractor must protect such objects from subsequent damage until delivered unto the care of the owner.

12.21.2 HISTORICAL FINDS

In the event potential historical, architectural, archeological, or cultural resources (hereinafter called cultural resources) are discovered during subsurface excavations at the site of construction, the following procedures will apply:

- A. The Contractor must immediately notify the Engineer and stop any Work which may jeopardize the find pending an investigation of its significance;
- B. The Engineer will select a qualified archeologist (such as through the Northwest Information Center at Sonoma State University or other official contact) and wait for an archaeologist to complete an evaluation of significance before continuing Work in that area.
- C. The Engineer will supply the Contractor with a "Stop Work Order" directing the Contractor to cease all portions of the Work that the Engineer determines may impact the find. The "Stop Work Order" will be effective until a qualified archaeologist assesses the value of the potential cultural resources. The "Stop Work Order" will contain the following:
 1. A clear description of the Work to be suspended;
 2. Any instructions regarding issuance of further orders by the Contractor for materials services;
 3. Guidance as to action to be taken regarding subcontractors;

4. Any direction to the Contractor to minimize costs; and
 5. Estimated duration of the temporary suspension.
- D. If the archaeologist determines the potential find is a bonafide cultural resource, the Engineer may extend the duration of the “Stop Work Order” in writing, and if so the “Stop Work Order” will remain in effect and Work subject to the “Stop Work Order” may not resume work until authorized by the Engineer.

12.21.3 CULTURAL RESOURCES INDICATORS

Possible indicators that a cultural resource has been found include, but are not limited to the following:

- A. Prehistoric-era archaeological site indicators: obsidian tools, tool manufacture waste flakes, grinding and other implements, dwelling sites, animal or human bones, fossils, and/or locally darkened soil containing dietary debris such as bone fragments and shellfish remains;
- B. Historic-era site indicators; ceramic, glass, and/or metal.

12.21.4 ENGINEER'S DISCRETION

Once possible cultural resources are found at the Work site, the Engineer may use discretion to continue the work, regardless of the cultural resource find, if the Engineer determines that there are overriding considerations such as the instability of the excavation site, that there are weather or other conditions which would preclude leaving the site exposed, or if the site would be unsafe to workers who would retrieve cultural resource items from therein.